IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1784 of 2007
With
CIVIL APPLICATION No. 4658 of 2007

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

UNITED INDIA INSURANCE CO. LTD. - Appellant(s)
Versus
HINABEN DINESHBHAI PATEL & 5 - Defendant(s)

==========

Appearance :
MS MEGHA JANI for Appellant(s) : 1,
MR MTM HAKIM for Defendant(s) : 1,
None for Defendant(s) : 2 - 6.

==========

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The appeal is admitted. Learned advocate Mr. Hakim appearing for respondents nos. 1 to 4(original claimants), waives service of notice of appeal on behalf of the said respondents. It is not necessary to await service of notice of appeal on respondents nos. 5 and 6 who were the driver and owner of the offending truck involved in the motor vehicle accident. At the joint request of learned advocates for the parties, this appeal is taken up for final disposal straightway.

2. The appeal arises out of a judgement and order dated 3rd October, 2006 passed by Motor Accident Claims Tribunal(Aux.) Vadodara in MACP No.1699/1998.

3. One Dineshbhai and Kishorebhai were travelling on a Scooter at which time the Scooter met with an accident when a truck insured by the appellant insurance company collided with the Scooter. In the accident, both the persons travelling on the Scooter received fatal injuries. Opponents nos. 1 to 4 who included widow, minor daughter and aged parents of the deceased therefore, filed claim petition no.1699/1998 before the Motor Accident Claims Tribunal seeking compensation from the driver,

owner and insurer of the truck involved in the accident.

4. With respect to question of negligence of the truck driver in causing the accident, on the basis of evidence on record which included eye witnesses account and Panchnama of the scene of accident, the tribunal was of the opinion that accident was caused on account of sole negligence attributable to the driver of the truck. Since the appellant insurance company has not raised any dispute about this factual finding arrived at by the Tribunal, we need not go into further details in this regard.

5. With respect to the quantum of compensation, before the tribunal the claimants averred that the deceased was running a Photo Studio and that he was earning a sum of Rs.10,000/- per month. To establish the income of the deceased, claimants had produced certain documentary evidence in the form of income-tax returns. The tribunal however, assessed monthly income of the deceased at Rs. 6,000/- per month. Taking note of the fact that the deceased was a young man aged 32 years on the date of accident and likely increase in his income in future, the tribunal assessed his future income at Rs. 9,000/- per month. 1/3rd of this sum was reduced for personal expenditure of the deceased thereby leaving a sum of Rs. 6,000/- per month by way

of dependency benefits for the family. Considering the age of deceased, tribunal adopted multiplier of 15 and awarded a sum of Rs.10,80,000/-(Rs.6000x12x15) towards dependency benefits. To this tribunal added Rs. 5,000/- for funeral expenses, Rs.10,000/- for loss of consortium. Tribunal also granted a sum of Rs.10,000/- for loss of expectation of life. Tribunal thus, awarded a total compensation of Rs.11,05,000/- with 9% interest from the date of claim petition till realisation.

6. Before us, the appellant insurance company has confined the appeal only on quantum of compensation and rate of interest. In fact, in appeal the insurance company has limited its challenge to Rs.2,34,000/-.

7. Having heard learned advocates appearing for the parties, we find that there is some scope for interference in the quantum of compensation awarded by the tribunal.

8. It may be recalled that the tribunal assessed monthly income of the deceased at Rs.6,000/-. For coming to such a conclusion tribunal took into account documents produced at exh. 42 and 43 by the claimants. These documents were regarding income tax returns filed on behalf of the deceased. The tribunal having noted that such income tax returns were filed after death

of accident, in our view, ought not to have placed reliance on such documents. It can however, not be denied that deceased was running his own Photo Studio. Considering his age and nature of his self employment, we find that the his monthly income can be assessed at Rs.5,000/- per month. Considering that he was young man aged barely 32 years on the date of accident, there was every possibility of earning higher income in future. Granting 50% increase in his monthly income on the date of accident for consideration of prospective income, the sum comes to Rs.7500/- per month. 1/3rd of the said sum needs to be reduced for the personal expenditure of the deceased himself thus, living a sum of Rs. 5,000/- by way of dependency benefits for family. Thus the dependency benefits for the claimants would be worked out at Rs. 60,000/- per annum. Multiplier of 15 adopted by the tribunal for man aged 32 years is just and proper and we maintain the same. The claimants would therefore, receive a sum of Rs.9,00,000/-(Rs.60,000/-x15) towards dependency benefits. To this we may add conventional amount of Rs.25,000/- for loss of estate, Rs.15,000/- for loss of consortium and Rs.5,000/- for funeral expenses. Thus total compensation for claimants would therefore, work out to Rs.9,45,000/-. We order accordingly. The order under challenge stands modified accordingly.

9. The appellant insurance company contended that the tribunal ought to have awarded interest only at the rate of 7% instead of 9%. We are unable to accept the contention of the appellant insurance company. It cannot be disputed that recently the bank rates have been increasing steadily. Even the Apex Court in the case of **Tejinder Singh Gujral v. Inderjit Singh and anr.** reported in (2007) 1 Supreme Court Cases 508, taking note of the trend has approved 9% interest in Motor accident cases. In that view of the matter, contention of the insurance company needs to be turned down.

10. With these directions, the appeal is allowed in part and disposed of accordingly.

11. In view of order passed in the First Appeal, Civil Application for stay does not survive and same accordingly stands dismissed.

12. The amount of Rs.25,000/- deposited by the appellant insurance company before this Court at the time of filing the appeal shall be transmitted to the Tribunal by the Registry within four weeks from today.

(B.J.Shethna,J.)

(Akil Kureshi,J.)

(raghu)